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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/027,954	12/19/2001	Frank Venegas JR.	IDS-14602/14	2646		
25006	7590	12/13/2007	EXAMINER			
GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021				KATCHEVES, BASIL S		
ART UNIT		PAPER NUMBER				
3633						
MAIL DATE		DELIVERY MODE				
12/13/2007		PAPER				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/027,954	VENEGAS, FRANK
	Examiner	Art Unit
	Basil Katcheves	3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 October 2007.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 6 and 7 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 6,7 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3)  Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application  
 6)  Other: \_\_\_\_\_

**DETAILED ACTION**

The applicant has cancelled claims 1-5 and added new claims 6 and 7 in the amendment dated 2/26/07.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,261,647 to Venegas, Jr. et al.

Regarding claim 6, Venegas discloses a barrier covered by polymeric sheathing (column 2, lines 57-58; fig. 5: 54 & 30) having a pair of spaced vertical supports (22) with a lower end coupled to the ground, a horizontal bar (fig. 1: 14) having two ends which extend beyond the two vertical support tubes, the ends of the horizontal bar are coupled to respective vertical tubes (fig. 1), wherein the horizontal crossbar includes two lower holes (fig. 2: where 44 points) which receive the upper ends (27) of the vertical supports, each vertical support includes a threaded fastener (fig. 5: 39) to receive a threaded member (38) inside (through) each end of the horizontal member, the threaded member (38) projecting in an outward manner (fig. 5: see threaded member pointing outward of the horizontal member) to prevent lift off of the horizontal member.

Regarding claim 7, Venegas discloses end caps (58) on the horizontal member.

***Response to Arguments***

Applicant's arguments filed 2/26/07 have been fully considered but are moot under new grounds of rejections.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK

Basil Katcheves

4/11/07

Examiner AU 3635

## DETAILED ACTION

Pending claims 6 and 7 are examined below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,261,647 to Venegas, Jr et al.

Regarding claim 6, Venegas discloses a barrier covered by polymeric sheathing (column 2, lines 57-58; fig. 5: 54 & 30) having a pair of spaced vertical supports (22) with a lower end coupled to the ground, a horizontal bar (fig. 1: 14) having two ends which extend beyond the two vertical support tubes, the ends of the horizontal bar are coupled to respective vertical tubes (fig. 1), wherein the horizontal crossbar includes two lower holes (fig. 2: where 44 points) which receive the upper ends (27) of the vertical supports, each vertical support includes a threaded fastener (fig. 5: 39) to receive a threaded member (38) inside (through) each end of the horizontal member, the threaded member (38) projecting in an outward manner (fig. 5: see threaded member pointing outward of the horizontal member) to prevent lift off of the horizontal member. However, Venegas does not disclose the barrier as having a single horizontal bar, Venegas discloses two bars. It would have been obvious to one having ordinary skill in

the art at the time the invention was made to use one bar, since it has been held that a mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. V. Bemis Co.*, 193 USPQ 8. Also, Venegas does not disclose the horizontal bar as having a length less than the vertical support bars. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to change the length of the bar in Venegas because a change in shape or length is within the level of ordinary skill in the art absent persuasive evidence that the particular configuration is significant (see MPEP 2144.04 (IV) (B). A change in length would be obvious depending upon the application and available space for which the barrier is to be used.

Regarding claim 7, Venegas discloses end caps (58) on the horizontal member.

### **Response to Arguments**

Applicant's arguments filed 10/3/07 have been fully considered but they are not persuasive. The applicant argues the changes made in the recent amendment. These limitation changes are addressed in the rejection above.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot, can be reached at (571) 272-6777.

BK

12/6/07

*Basil Katcheves* 12/10/07  
Basil Katcheves  
RICHARD CHILCOT  
XV3635